

FENNEMORE CRAIG, P.C.  
Amy Abdo (No. 016346)  
Brett C. Gilmore (No. 034598)  
2394 E. Camelback Road  
Suite 600  
Phoenix, Arizona 85016  
Telephone: (602) 916-5000  
Email: [amy@fennemorelaw.com](mailto:amy@fennemorelaw.com)  
Email: [bgilmore@fennemorelaw.com](mailto:bgilmore@fennemorelaw.com)

LOEB & LOEB LLP  
Oleg Stolyar (CA SBN 229265-Pro Hac Vice)  
[astolyar@loeb.com](mailto:astolyar@loeb.com)  
Jeremy Margolis (IL SBN 1763865-Pro Hac Vice)  
[jmargolis@loeb.com](mailto:jmargolis@loeb.com)  
David Beddingfield (CA SBN 308491-Pro Hac Vice)  
[dbeddingfield@loeb.com](mailto:dbeddingfield@loeb.com)  
10100 Santa Monica Blvd., Suite 2200  
Los Angeles, CA 90067  
Telephone: 310.282.2000

*Attorneys for Plaintiffs Oleg Boyko  
and Finstar-Holding LLC*

UNITED STATES DISTRICT COURT  
DISTRICT OF ARIZONA

Oleg Boyko, an individual, and  
Finstar-Holding LLC, a Russian limited  
liability company,

Plaintiffs,

v.

Alexey Kondratiev, an individual, and  
<olegvboyko.website>,

Defendants.

No. CV-23-01186-PHX-DLR

**PLAINTIFFS' OPPOSITION TO  
DEFENDANT KONDRATIEV'S  
MOTION TO DESIGNATE THE  
08/25/23 HEARING AS  
EVIDENTIARY HEARING**

Plaintiffs Oleg Boyko and Finstar-Holding LLC ("Plaintiffs"), through their counsel, hereby submit their Opposition to Defendant Alexey Kondratiev ("Defendant") Motion to Designate the August 25, 2023 Hearing as Evidentiary ("Defendant's Motion").

**I. INTRODUCTION**

This Court ordered the parties to submit a Joint Statement to the Court by August 17 as to whether the August 25, 2023 hearing on Plaintiffs' Motion for Preliminary Injunction

1 should be evidentiary or via oral argument. After the parties were unable to reach  
 2 agreement, Plaintiffs timely filed their Statement of position as to whether the 08/25/23  
 3 hearing should be evidentiary or via oral argument. (See ECF 29)

4 Defendant, instead, chose to file a motion, which was filed after the Court-ordered  
 5 deadline. See ECF 30. Accordingly, as Defendant filed a motion rather than his respective  
 6 Statement of position, and because Defendant's Motion contains misrepresentations of the  
 7 record and attacks Plaintiffs' counsel, Plaintiffs feel compelled to respond. Defendant's  
 8 Motion should be denied for the following reasons.

## 9 **II. DEFENDANT'S MOTION FOR EVIDENTIARY HEARING SHOULD BE** 10 **DENIED**

11 As a threshold matter, a "written motion and notice of the hearing must be served at  
 12 least 14 days before the time specified for the hearing," unless otherwise allowed by Court  
 13 order. Fed. R. Civ. Proc. 6(c). Here, the Court's 07/31 Order ordered the parties to set  
 14 forth their respective positions as to whether the 08/25 hearing should be evidentiary by  
 15 August 17, but did not allow for the filing of additional motions. That alone should require  
 16 the denial of Defendant's Motion.

17 Leaving aside the Motion's procedural defects, it should also be denied on the  
 18 merits. Plaintiffs have already set forth their position as to why an evidentiary hearing on  
 19 their Motion for Preliminary Injunction should not be required in Plaintiffs' Statement filed  
 20 on 08/17/23, and will not burden the Court by repeating those same arguments here.  
 21 Plaintiffs instead **incorporate those arguments by reference. See ECF 29.**

22 Plaintiffs do, however, feel compelled to correct the various misstatements in  
 23 Defendant's Motion, and to respond to Defendant's personal attacks on Plaintiffs' counsel.  
 24 First, Defendant begins his Motion by claiming that his prior agreement – that the hearing  
 25 on the Motion for Preliminary Injunction need not be evidentiary – was a "prerequisite" to  
 26 the "Defendant bringing a motion to allow his appearance at all hearings by  
 27 videoconference." It is unclear what Defendant means by this. But to the extent Defendant  
 28 argues that his "agreement" that the hearing should be non-evidentiary was conditioned on

1 the *Court* granting his request to appear via video, that pre-condition is found nowhere in  
2 the email correspondence of the parties. See 08/17/23 Declaration of Oleg Stolyar  
3 (“Stolyar Decl.”) (ECF 29-1), at Ex. 1.

4 Further, in any case, Plaintiffs do not object to the Defendant appearing via video at  
5 the August 25 hearing, so long as Plaintiffs’ counsel (and Plaintiffs witnesses, in the event  
6 the Court deems the hearing to be evidentiary, which it should not) are allowed to do the  
7 same – which is exactly what Plaintiffs have consistently stated to Defendant in their meet  
8 and confer correspondence on this issue. See Stolyar Decl., Exs. 1-3. (ECF 29-1).

9 Second, Defendant claims he cannot waive his right to an evidentiary hearing  
10 without first seeing all filed materials for the motion. Leaving aside that Defendant chose  
11 to agree to have the hearing via “oral argument” prior to the opposition and reply papers  
12 for that motion being filed, Plaintiffs have not contended that Defendant “waived” his right  
13 to an evidentiary hearing. Rather, in their 08/17 Statement (ECF 29), Plaintiffs asserted  
14 that – given Defendant’s prior agreement that the hearing would be via oral argument –  
15 Defendant is now barred from reneging on that agreement by the doctrine of estoppel, as  
16 Plaintiffs had detrimentally relied on Defendant’s prior agreement in preparing for the  
17 hearing. Defendant’s Motion does nothing to respond to that “estoppel” argument.

18 Third, Defendant’s suggestion that he should be given special consideration because  
19 he is appearing pro-per, and the motion rules are different in Canada, should be rejected.  
20 See, e.g., “*U.S. v. Flewitt*, 874 F.2d 669, 675 (9th Cir. 1989) (“A defendant who knowingly  
21 and intelligently assumes the risks of conducting his own defense is entitled to no greater  
22 rights than a litigant represented by counsel”); *U.S. v. Merrill*, 746 F.2d 458, 465 (9th Cir.  
23 1984) (“A *pro se* defendant is subject to the same rules of procedure and evidence as  
24 defendants who are represented by counsel.”) *King v. Atiyeh*, 814 F.2d 565, 567 (9th Cir.  
25 1986) (accord).

26 Fourth, contrary to Defendant’s assertions, Plaintiffs’ counsel have consistently  
27 advised him that Plaintiffs object to the need for an evidentiary hearing. Plaintiffs’ counsel  
28 advised Defendant in their initial correspondence (on July 25) that it is Plaintiffs’ position

1 that the hearing should be “by oral argument, rather than evidentiary,” and then confirmed  
 2 that initial position by submitting a proposed Joint Statement reflecting same on August  
 3 14, 2023. Stolyar Decl., Exs. 1-2 (ECF 29-1). Then, after Defendant reneged on his prior  
 4 agreement for the hearing to be via oral argument, Plaintiffs’ counsel advised Defendant  
 5 that Plaintiffs have no objection to Defendant appearing via zoom, if such agreement is  
 6 reciprocal, but that Plaintiffs “object to the need for an evidentiary hearing.” *Id.*, Ex. 3.

7 Lastly, Defendant’s assertion that Plaintiffs’ counsel tried “to confuse” and  
 8 “attempted to mislead” him is false. Once the Court issued its 08/15 Order allowing for  
 9 the commencement of discovery, Plaintiffs’ counsel advised Defendant that they can make  
 10 Mr. Tyndik (the primary declarant in support of the Motion, and representative of Plaintiff  
 11 Finstar, the owner of the Boyko Mark) available for deposition in advance of the 08/25  
 12 hearing. *Id.*, Ex. 3. That would have allowed Defendant to then use the transcript from  
 13 that deposition at the 08/25 hearing, obviating the need for Defendant to ask the same  
 14 questions of Mr. Tyndik at the hearing. Tellingly, Defendant refused that offer.

15 Notably, in the prior litigation between Defendant and Mr. Boyko in Canada,  
 16 Defendant also engaged in personal attacks on Mr. Boyko’s counsel, accusing them (as  
 17 well as Mr. Boyko) of various wrongful conduct. Those baseless accusations ultimately  
 18 resulted in a Court Order awarding costs against Defendant as a “**vexatious**” **litigant**.  
 19 Notably, in that Order, the Superior Court of Justice based its award of costs, in part, on  
 20 Kondratiev “acting in a vexatious matter, **including various improper attacks on**  
 21 **counsel.**” 06/27/23 Stolyar Decl., Ex. C (ECF 2-2) (emphasis added). It is unfortunate  
 22 that Defendant has chosen to continue his prior pattern of unfounded and false attacks on  
 23 opposing party’s counsel in his papers, just as he had in the prior Canada litigation.

### 24 **III. CONCLUSION**

25 For the foregoing reasons, and for the reasons set forth in Plaintiffs’ Statement  
 26 Regarding Whether the Preliminary Injunction Hearing Scheduled for August 25, 2023  
 27 Should Be Evidentiary or Via Oral Argument (ECF 29), Defendant’s Motion to Designate  
 28 the Hearing as Evidentiary should be denied.

1 DATED this 18<sup>th</sup> day of August, 2023.

2 FENNEMORE CRAIG, P.C.

3  
4 By: s/ Brett C. Gilmore

5 Amy Abdo  
6 Brett C. Gilmore

7 LOEB & LOEB LLP

8  
9 By: s/ Oleg Stolyar

10 Oleg Stolyar  
11 Jeremy Margolis  
12 David Beddingfield

*Attorneys for Plaintiffs Oleg Boyko  
and Finstar-Holding LLC*

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